

REMARKS/ARGUMENTS

After entry of this amendment, claims 1-20 are pending in the subject application. Of those, claims 4-6 and 10-16 are currently withdrawn from consideration. Applicant has amended claims 1, 3, 9, and 19 in order to further define and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully requests the Examiner reconsider and withdrawn the rejections and objections cited in the Office Action.

I. OBJECTIONS TO THE CLAIMS

The Examiner first objected to claims 3 and 9, asserting that those claims are drawn to the combination of the apparatus and substructure, where the substructure is not earlier claimed. The Examiner suggested that the preamble in claims 1 and 9 could be amended to claim substructure. In response, Applicant respectfully submits that the machine foundation and substructure, as stated in the preambles of claims 1 and 9, are workpieces upon which the apparatus operates. Applicant believes that claims 3 and 9, prior to the amendments herein, do not claim the substructure but rather simply specify the positional relationship of the support member with respect to the substructure.

Nonetheless, in order to clarify that neither the machine foundation nor the substructure are being claimed, Applicant has amended claims 3 and 9 to recite: “a support member in contact with said bearing member and engageable with said substructure for isolating said machine foundation from said substructure.” Applicant believes that this recitation makes clear that the support member and machine foundation are simply workpieces rather than claimed elements. For this reason, Applicant respectfully requests that the objection to claims 3 and 9 be withdrawn.

The Examiner next objected to the term “communicatable” in claim 19, stating that the Examiner believes that Applicant intended “communicable.” Although the Applicant believes that

“communicatable” is proper, being discernable in meaning and in wide usage in prior United States’ patents, Applicant believes that “communicatable” and “communicable” are synonymous, and thus, the Applicant has amended claim 19 as suggested. Accordingly, Applicant respectfully requests that the Examiner withdraw the objection to claim 19.

II. DOUBLE PATENTING REJECTION

The Examiner next indicated that claims 1, 2, 3, and 9 were rejected on the grounds of non-statutory obviousness type double patenting as being unpatentable over claims 1, 2, 4, 8, and 9 of United States Patent No. 6,739,568. While the Applicant does not necessarily agree with the Examiner, a Terminal Disclaimer is submitted herewith. Thus, Applicant respectfully requests that the double patenting rejection be withdrawn.

III. REJECTIONS UNDER 35 U.S.C. §102

The Examiner rejected claims 1-3, 7-9, and 17-19 under 35 U.S.C. §102(b) as being anticipated by Cristy, United States Patent No. 4,074,474. With regard to claim 1, the Examiner asserted that Cristy discloses an apparatus having a rigid enclosure with an upper portion 42 and a lower portion 22, 24 and means for telescopically adjusting the upper and lower portions 70 by inflation and deflation.

Applicant respectfully disagrees with the Examiner’s assertion that Cristy discloses an apparatus having a rigid enclosure with an upper portion 42 and a lower portion 22, 24. Cristy discloses an apparatus having a plurality of parallel elongated piers 19, wherein the piers comprise a plate member 20, a pair of vertically-extended Z-shaped frame members 22 and 24, and an intermediate support body 26 (Col. 3, lines 18-23). It is clear from Cristy that the frame members 22

and 24 define an enclosure in which an elongated inflatable bag 60 may be disposed (Col. 3, lines 53-56). However, element 42, which was cited by the Examiner as the upper portion of an enclosure, is described by Cristy as a wood plate segment 42 that is a portion of the intermediate support body 26. The intermediate support body 26 is described as an assembly of the wood plate segment 42 and a plywood plate segment 44 that are spaced apart by a narrow width segment 46 secured by bolts 48 (Col. 3, lines 36-41). Essentially, the structure asserted by the Examiner as an upper portion of a rigid enclosure is nothing more than a wooden beam, which, by definition, is a solid body that cannot enclose anything. Applicant further disagrees with the Examiner that Cristy discloses means for telescopically adjusting the upper and lower portions. The structure pointed to by the Examiner, a conduit 70, is taught by Cristy as inflating and deflating the elongated inflatable bag 60. While Cristy does disclose an adjustment means, the frame members 22 and 24 are simply not related to the elongated intermediate support body 26 telescopically. In order to clarify the invention stated in claim 1, Applicant has amended claim 1 to recite a substantially hollow rigid enclosure having an upper portion and a lower portion. As the invention stated in claim 1, as amended, is not shown or described in the references of record, Applicant respectfully requests that the rejection of claim 1 be withdrawn.

With regard to claim 2, the Examiner asserted that the upper portion 42 of the enclosure of Cristy has a flange 50 with an aperture 48, and the lower portion has an anchor ring 54 with a rod 48 connected through and extending through the aperture in the upper portion and a slip joint connected to the flange of the upper portion for releasably connecting the rod to the flange.

Applicant respectfully disagrees with the Examiner's assertion that Cristy shows the structure described by claim 2. Element 50 simply cannot be a flange having an aperture extending

therethrough, to the extent that the aperture 48 extends through the entire assembly 26 of which element 50 is a portion. Furthermore, Cristy describes that the element 48 is a bolt which secures the portions of the support body 26, namely, the wood plate segment 42, the plywood plate segment 44, and the narrow width segment 46 together. Element 54, which was cited by the Examiner as an anchor ring, is an upper flange of an elongate Z-shaped frame member 24. Furthermore, while claim 2 describes that the rod is connected to the anchor ring, there is no connection in the structure of Cristy between the flange portion 54 and the bolt 48. Furthermore, Cristy makes clear that the bolt 48 secures the various portions of the support body 26 to one another. There is simply not a slip joint, as required by claim 2, nor is there any way in which the rod 48 could serve to provide some type of telescopic adjustment between elements 50 and 54. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claim 2.

With regard to claim 3, the Examiner asserted that Cristy has a bearing member 44 that is connected to the lower portion 24 of the enclosure and a support member 60 in contact with the bearing member 44 and the substructure 20. The element 44 pointed to by the Examiner is simply not connected to the lower portion 24 of the enclosure of Cristy, as required by claim 3. Applicant respectfully requests that the rejection of claim 3 be withdrawn.

In regard to claim 7, the Examiner stated, without support, that the support member 60 of Cristy may be replaced with other support members. There is no disclosure in Cristy to this effect. For this reason, Applicant respectfully requests that the rejection of claim 7 over Cristy be withdrawn.

With regard to claim 8, the Examiner stated that the support member 60 is an inflatable air bag. However, in light of the amendment to claim 1 and the arguments presented with respect to claim 3, Applicant believes that the invention stated by claim 8 is neither anticipated nor obvious over

the references of record. Accordingly, Applicant respectfully requests that the rejection of claim 8 be withdrawn.

With regard to claim 9, the Examiner asserted that Cristy discloses an apparatus with a rigid enclosure having an upper portion 42 and a lower portion 24 telescopically connected to each other, a bearing member 44 in the enclosure and connected to the lower portion 24 and a support member 60 between the bearing member 44 and the substructure 20.

Applicant respectfully disagrees with the Examiner's characterization of Cristy for the reasons stated in regard to claims 1 and 3, above. In order to clarify the invention stated in claim 9, Applicant has amended that claim to recite a substantially hollow rigid enclosure. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claim 9 over Cristy.

With regard to claim 17, the Examiner asserted that the prior art discloses that the support member 60 is removable so that it may be replaced. With regard to claim 18, the Examiner asserted that Cristy discloses that the support member is an inflatable air bag. With regard to claim 19, the Examiner asserted that the prior art discloses a conduit 72 coupled to the air bag 60 and communicable with an air source. While the Applicant does not necessarily disagree with the Examiner's characterization of Cristy with respect to claims 17, 18, and 19, Applicant respectfully submits that as previously explained, these claims depend from claim 9, which recites an invention that is structurally distinguishable from Cristy. Accordingly, Applicant respectfully requests that the rejections of claim 17-19 be withdrawn.

IV. REJECTIONS UNDER 35 U.S.C. §103

The Examiner next rejected claim 20 under 35 U.S.C. §103(a) as being unpatentable over Cristy in view of Doyle, United States Patent Application Publication No. US 2005/0191956. The

Examiner asserted that Cristy discloses that the conduit 72 communicates with the air bag 60 but does not disclose that the conduit extends through the substructure 34. The Examiner then asserted that Doyle discloses a conduit extending through a substructure 58. The Examiner then concluded that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the conduit in Cristy extend through the substructure as in Doyle because it is well-known in the art to do so.

Applicant respectfully disagrees with the Examiner's finding that claim 20 is obvious over Cristy in view of Doyle. The Examiner has stated no suggestion or motivation to combine these references. Furthermore, Cristy is directed to a floor support arrangement, while Doyle is directed to radon mitigation. These references come from drastically different fields of endeavor and are thus non-analogous art. Furthermore, claim 20 is dependent upon claim 19 and thus should be allowable for the reasons stated with respect to claim 19.

V. CONCLUSION

For the foregoing reasons and in light of the amendments, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections and objections to the above-noted claims and allow the claims to proceed to issue.

If the Examiner has any questions or comments regarding this matter, Applicant's undersigned counsel may be reached at (734) 662-0270.

Respectfully Submitted,



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